HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

Writ Appeal No.664 OF 2005

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Between:

Shankar Goud

..... Appellant

AND

Government of Andhra Pradesh,

Represented by its Principal Secretary to Government,

Panchayat Raj and Rural Development (PTS-II) Dept.

Secretariat Buildings,

Hyderabadq and three others.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Mrs.S.Nanda

Counsel for Respondent Nos. 1 to 3 : Government Pleader for

Panchayat Raj and Rural

Development

Counsel for Respondent No. 4 : None

Dated 21/3/2006

Per Sri G.S.Singhvi, CJ

This appeal can appropriately be described as fourth round of litigation by the appellant, who filed Writ Petition No.24890 of 2004 for quashing order dated 23.12.2004 passed by the State Government under Section 249(7) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'), but could not persuade the learned Single Judge to entertain his prayer.

The appellant was elected as Sarpanch of Gram Panchayat, Jawaharnagar, Shameerpet Mandal, Ranga Reddy District in August, 2001. On receipt of some complaints that the Sarpanch had committed financial irregularities, Collector (Panchayat Wing), Ranga Reddy District (Respondent No.3) got conducted fact finding enquiry through Divisional Panchayat Officer, Ranga Reddy (East). The

latter submitted report with the finding that the allegations levelled against the Sarpanch were prima facie correct. Thereupon, respondent No.3 issued notice dated 15.5.2004 under Section 249(1) of the Act and called upon the appellant to show cause against his proposed removal from the office. The charges enumerated in the notice were:

> "Charge No.1: That the Sarpanch G.P. Jawaharnagar of Shameerpet Mandal has drawn amounts through cheques and collected amounts for Rs.65,31,525/- from 12/99 to 03/2004 and incurred expenditure for Rs.27,77,994/- on various items, the balance amount of Rs.37,53,531/- there is no vouchers and M.B's to know the genuineness of expenditure incurred by him.
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> Charge No.2: That he has collected taxes and fees from tax payers from 12/99 to 03/2004 for Rs.25,95,393/- and remitted an amount of Rs.17,16,178/- leaving a balance of Rs.8,79,215/- with him and he has incurred direct expenditure without remitting into Gram Panchayat funds which is irregular and unlawful act of Sarpanch.
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> Charge No.3: That the Sarpanch, Gram Panchayat, Jawaharnagar has failed to produce the connected records of JGSY/SGRY funds. He has draw Rs.6,41,701/- under said schemes and failed to produce the connected records to know the genuineness of expenditure. Thus it is clear that he has misused the funds for his personal needs and caused loss to Gram Panchayat willfully.
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> Charge No.4: That he has drawn Rs.1,42,893/- under Eleventh Finance Commission grants and failed to produce the connected records to know the genuineness of expenditure, thus it is clear the Saranch has willfully caused loss to Gram Panchayat.
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> Charge No.5: That the Sarpanch Gram Panchayat, Jawarharnagar has drawn an amount of Rs.71,390/- under SFC and failed to produce the connected records. Thus it is clear that he has misused the said amounts for his needs."

The notice sent to the appellant by Registered Post was returned with an endorsement dated 28.5.2004 'unclaimed'. However, on that very day, the appellant addressed separate letters to District Panchayat Officer, Ranga Reddy District and respondent No.3 with the request that records may be handed over to him for the purpose of filing reply to the show cause notice. On receipt of that letter, respondent

No.3 sent communication dated 7-6-2004 and called upon the appellant to appear in the office of the District Panchayat Officer for perusal of the records. The same was also returned with the endorsement 'unclaimed'. Thereafter, respondent No.3 passed order dated 22.6.2004, whereby he removed the appellant from the office of Sarpanch.

The appellant challenged the order of removal in Writ Petition No.11007 of 2004, which was disposed of by the learned Single Judge vide his order dated 2-7-2004 with liberty to the petitioner (appellant herein) to avail the alternative remedy of appeal under Section 249 (7) of the Act. For the sake of reference, penultimate paragraph of that order is reproduced below.

> "The petitioner is at liberty to file an appeal, under Section 249(7) of the A.P.Panchayat Raj Act, 1994 raising all his contentions. On filing such an appeal, the appellate authority is directed to examine all the contentions raised by the petitioner, including non-providing of relevant records to the petitioner, and pass appropriate orders in accordance with law, as expeditiously as possible".

Armed with the order of the Court, the appellant filed an appeal under Section 249 (7) of the Act. He pleaded that respondent No.3 had not given him an effective opportunity to show cause against his proposed removal. However, without considering his plea, the State Government dismissed the appeal by a rather cryptic order dated 29-7-2004 by treating it as a revision. The appellant challenged that order in Writ Petition No.13726 of 2004. He also filed an application for stay of orders dated 22-6-2004 and 29-7-2004 passed by respondent No.3 and the State Government respectively. By order dated 4-8-2004, the learned Single Judge suspended operation of the orders impugned in the writ petition. Thereafter, the respondents filed WVMP.No.2359 of 2004 for vacating the interim order. When that petition was taken up for hearing, learned counsel for the parties agreed that the main writ petition may be disposed of. Their request was accepted by the learned Single Judge, who passed order dated 7-9-2004, the relevant portions of which read as under.

> "This writ petition is filed to quash the order dated 29.7.2004 in G.O.Rt.No.1096 passed by the second respondent directing the first respondent to take necessary

action for recovery of misappropriated amount from the petitioner, as illegal, arbitrary and violative to the observations made by this Court in W.P.No.11007 of 2004 dated 2.7.2004. This Court while admitting the writ petition on 4.8.2004, suspended the orders impugned. Be that as it is, WVMP No.2359 of 2004, filed by the respondents to vacate the interim orders passed earlier, is listed today.

After passing the orders in the above WVMP No.2359 of 2004 and WPMP No.17623 of 2004, the learned counsel for the petitioner and learned Assistant Government Pleader for Panchayat Raj rightly submit that the matter may be remanded to the Government for consideration of the matter afresh. Therefore, the writ petition is disposed of at the interlocutory stage remitting the matter to the Government. The Government will do well to consider all questions raised by the writ petitioner and pass a reasoned order. It shall be open to the Government to entertain the application of any third party from the village to intervene in the matter. The Government may pass appropriate orders in the revision petition within a period of eight weeks from the date of receipt of a copy of this order. Till then the petitioner shall be continued as Sarpanch."

Respondent No.4 challenged the order of the learned Single Judge in Writ Appeal No.1618 of 2004, which was summarily dismissed by the Division Bench on 14.10.2004.

At the end of second round of litigation, the State Government passed order dated 23.12.2004 whereby it confirmed the order of punishment passed by respondent No.3. The rationale, reason and ratio of the order passed by the Government is contained in para 12 thereof , which is extracted below.

"The Government after hearing of arguments of both the parties found that the Collector (PW), Ranga Reddy District has provided ample opportunity to the petitioner to submit his explanations. However, the petitioner has failed to avail himself of the opportunity given by the Government and there is no deviation of principles of natural justice. The petitioner has misappropriated a huge amount of Rs.37,53,531/- under various schemes and Gram Panchayat funds. A land grabbing case is also still pending against him and a police case is also

> booked against him. The continuance of Sri Shankar Goud as Sarpanch of Jawaharnagar Gram panchayat, Shameerpet Mandal, Ranga Reddy District is therefore detrimental to, and hampers the development of the Gram Panchayat and is also against the interests of the public at large. Further, it is observed that the petitioner has not submitted any reply to the two show cause notices even though the records were with him. Even for the third show cause notice, the Sarpanch did not respond. It was only after the records were seized and the third show cause notice for removal was issued that he made a request to hand over the records to enable him to give reply to the show cause notice. Though the DPO has given a reply to the request of the petitioner asking him to verify the records in the office during the working hours and submit the reply, the Sarpanch did not respond. It is therefore clear that the Sarpanch did not respond to the three show cause notices and also to the Memo issued by the DPO, but thereafter raised the plea that there was no answer to his request for handing over of records. The above attitude of the petitioner therefore clearly indicates his intention to avoid the necessity of having to give reply to the charges apparently because he had no reasonable explanation. The Government, therefore, hereby confirm the orders of the Collector (PW) Ranga Reddy District issued in the reference 1st read above."

The appellant questioned the legality and correctness of order dated 23-12-2004 in Writ Petition No.24890 of 2004. He pleaded that the order passed by respondent No.3 is vitiated due to violation of the mandate of Section 249(1), which casts a duty on the officer concerned to pass order of removal after giving the Sarpanch reasonable opportunity to explain his position. According to the appellant, the failure of the respondents to supply copies of the record and reports, which constituted the basis of the allegations levelled against him, resulted in violation of the statutory provision as well as the rules of natural justice. Another plea taken by the appellant was that the substratum of the allegations which form part of the order passed by respondent No.3 and the State Government was substantially different than the charges enumerated in notice dated 15.5.2004 and therefore, he will be deemed to have been punished without being afforded opportunity to show cause against the new charges.

In the counter affidavit filed on behalf of the respondents, it was pleaded that the order removing the petitioner was passed because he did not file reply to controvert the charges levelled against him. It was further averred that communication dated 7.6.2004 sent to the petitioner to enable him to peruse the records was returned 'unclaimed' and, therefore, he cannot complain of the violation of the rules of natural justice.

The learned Single Judge, after going through the record produced by the learned Government Pleader concluded that the appellant will be deemed to have received letter dated 7.6.2004 vide which an opportunity was given to him to inspect the records. In the opinion of the learned Single Judge, the return of the first notice dated 15.5.2004 as unclaimed and application dated 28.5.2004 made by the writ petitioner for supply of copies of records was indicative of the fact that he knew about the contents of the notice but deliberately avoided to accept the same.

We have heard Smt. S.Nanda, advocate for the appellant and the learned Government Pleader for Panchayats for respondents 1 to 3 and carefully perused the record.

In our opinion, it is not necessary to adjudicate on the legality of the order of removal passed by respondent No.3 in the context of the appellant's plea that he had not been given reasonable opportunity to explain because we are convinced that order dated 23.12.2004 passed by the Government is liable to be nullified on the ground of non-compliance of the direction given by two benches of this Court in Writ Petition No.11007 of 2004 and Writ Petition No.13726 of 2004, the relevant portions of which have been extracted above. In terms of the orders passed by the learned Single Judges, the State Government was duty-bound to advert to the contentions raised by the appellant in support of his challenge to the order of removal passed by respondent No.3 and decide the same by passing a speaking order. Though order dated 23.12.2004 runs into several paragraphs, no reason has been assigned for rejecting the plea raised by the appellant that he had not been supplied copies of the documents and reports which formed basis of the allegations and in this manner he

was not given reasonable opportunity to explain his position. We may have ourselves decided whether the said plea of the appellant had merit and whether non-supply of copies of the documents and reports prejudiced his cause, but in the peculiar facts of this case, we refrain from doing so because two Single Judges had concurrently directed the State Government to consider and decide the objections and pleas raised by the appellant, which the State Government has failed to do. In our opinion, the failure of the State Government to decide the appeal of the appellant by passing a speaking order cannot be compounded by the Division Bench by undertaking an exercise which the competent authority was required to do in terms of the directions given by the Court.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and Writ Petition No.24890 of 2004 is partly allowed by quashing order dated 23.12.2004. The State Government is directed to decide the representation of the appellant afresh by passing a speaking order and in consonance with the observations made in orders dated 2.7.2004 and 7.9.2004. Needless to say that the State Government shall hear the appellant and the representative of the department before deciding the representation in terms of this order.

Since the matter has remained pending before the Court for more than one year, we direct the State Government to pass fresh order within a maximum period of one month from today. The appellant is directed to appear before the competent authority on 31.3.2006. Within next 20 days, the competent authority shall pass appropriate order and communicate the same to the appellant.

G.S.SINGHVI, CJ

Dt.21/3/2006

G.BHAVANI PRASAD,J

msv/ARS

Note:- The Court Officer is directed to give attested copies of this order to the counsel for the parties.

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